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09/887,414	06/22/2001	James D. Goldschneider	FA0952 US NA	8944

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WILMINGTON, DE 19805

EXAMINER

GRAYSAY, TAMARA L

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/887,414

**Applicant(s)**

GOLDSCHNEIDER ET AL.

**Examiner**

Tamara L. Graysay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 11-33 and 38-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 34-37 and 46-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 June 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) (2 pages).
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date (4 pages).
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Election/Restriction*

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

- I. capacity planner, Figures 6...
- II. sales potential, Figures 7...
- III. direct repair program analyzer, Figures 8...
- IV. run charts, Figures 9...
- V. plant layout, Figures 10...
- VI. benchmarking, Figures 11...
- VII. business valuation, Figures 12...
- VIII. Paint Department Optimizer, Figures 13...
- IX. sales and production tracker, Figures 14...
- X. team pay calculator, Figures 15...
- XI. process audits, Figures 16...
- XII. work in process, Figures 17...

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable

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thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Sudhir Deshmukh, Reg.No. 33,677 on 19 July 2005 a provisional election was made without traverse to prosecute the invention of species VII, the Paint Department Optimizer, claims 1-10, 34-37 and 46-48. Affirmation of this election must be made by applicant in replying to this Office action. Claims 11-33 and 38-45 stand withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the

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currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### *Drawings*

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the process including the steps of processing customer business data to generate a business profile, modifying the business profile to generate a client survey, and furnishing the client survey to an organization requesting the customer survey, as recited in claim 46, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

*Specification*

5. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

6. The disclosure is objected to because of the following informalities:

- a. Appendix A which is referenced at page 5, line 27, has not been received.
- b. Reference to a "red" color is not depicted in Figure 6CA and 6CB. Applicant may use the color symbols as set forth in the MPEP to designate "red" if needed.

Appropriate correction is required.

*Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 5, 34-37, and 46-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5 and 34-37 contain the trademark/trade name Paint Department Optimizer.

Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35

U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify

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any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a software program and, accordingly, the identification/description is indefinite.

Claim 46/1 and 46/5, lines 4-5, "said customer survey" lacks antecedent basis in the claim. Further regarding claim 46, the claim is confusing because the terms customer, client, and organization are not used consistently within the claim and/or the specification. For example, the claim calls for processing customer data for generating a business profile (of the customer that is previously claimed as choosing a business tool and provided with a business solution); modifying the business profile (of the customer) to generate a client survey (the terminology is inconsistent with the specification that reads "customer survey" at page 44, line 27); and furnishing the client survey to an organization requesting the customer survey (whereas the specification, at page 44, reads the customer survey is furnished to a requesting organization, or in other words, the step of an organization requesting a survey is required prior to the step of processing the data to generate a business profile).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 1, 3, 4, 6-9, 10/1, 10/3, 10/4, 10/6, 10/7, 10/8, and 10/9, are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Alessandro (US-6556974).

Regarding claims 1 and 10/1, D'Alessandro discloses a network based business process (Internet-based (8:31-38)) comprising:

- a) receiving a request from a customer (employee or non-employee of the customer via data gathering interface 70) computer linked with a host computer (3:28-45, web server)
- b) completing a log on procedure (abstract; 5:1-5, log in; 7:19-59, password) to access a main menu comprising a business tool (e.g., 1:8-12, survey and evaluation related to organization operation)
- c) requesting customer to choose business tool (7:7-18, respondent completes survey including existence of performance criteria, weighting extrapolation, how criteria could be improved; leadership skill query, and quantified response)
- d) requesting customer to enter business data for performance analysis in chosen business tool (7:7-18, sample question screen)
- e) processing data through algorithmic module to carry out business analysis (7:47-48, analysis 140 is available when all users complete survey)
- f) providing a business solution based on the business analysis to customer computer (7:48-59, business evaluates current level of consistency about perceptions among different levels of the organization, business tracks scores to monitor improvements, and business compares organization scores to other organizations)



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Further regarding step c) the process of D'Alessandro is capable of "requesting" a customer to choose a business tool insofar as the survey respondent that logs in chooses to respond to the survey.

Regarding claims 3 and 10/3, the steps of ascertaining identity of a customer, requesting a new user to enter information, generating customer identification information, sending customer identity data to the user for future access, and allowing the new user to access the online service, are nothing more than a standard registration process for establishing log-on identification information for new registrants or users. The examiner takes Official notice that such a system was notorious in the field of business generally and more particularly in the online service provider industry. Online registration system uses are manifold, for example, to track user data and to ensure that only registered users have access to the information provided by an online service. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the data gathering interface and login 210-250 of D'Alessandro to include a logon procedure, such as that which is notorious in the field of online service providers, in order to track user data and to ensure that only registered users have access to the information provided by the online service. Further regarding claim 10/3, D'Alessandro discloses the use of Internet (8:31-38).

Regarding claims 4 and 10/4, the steps of ascertaining identity of the customer computer, requesting a user to enter customer identity data for matching against data in the host computer, and allowing the customer computer access to the main menu, are nothing more than standard

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computer authentication. The examiner takes Official notice that such authentication was old and well known in the field of computer technology. Authentication is used to protect information and to ensure access to information only by authorized persons / computers.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the login 210-250 of D'Alessandro to include a computer authentication, such as that which is well known in the field of computer technology, in order to ensure access to protect information and to ensure access to information only by authorized persons / computers. Further regarding claim 10/4, D'Alessandro discloses the use of Internet (8:31-38).

Regarding claims 6, 7, 10/6, and 10/7, the examiner takes Official notice that the use of instructions were well known in the operations research field and in particular, the field of online applications, as noted on page 12 of the specification. Instructions, in conjunction with online applications, are used to inform users of the process steps that will ensure a desired result.

Instructions are commonly visual or textual. For example, buttons labeled NEXT, PREVIOUS, HELP are well known expedients used to ensure that steps are performed in a particular order.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the process of D'Alessandro to include the steps of providing instructions and providing online help, such as that which is well known in the field of operations research and online applications, in order to ensure that the information provided is accurate and the process is performed in a particular manner. Further regarding claim 10/6 and 10/7, D'Alessandro discloses the use of Internet (8:31-38).

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Regarding claims 8 and 10/8, the D'Alessandro business tool inherently includes a validation step whereby analysis is performed after all users have completed the survey (7:47-48, analysis 140 is available when all users complete survey). Further regarding claim 10/8, D'Alessandro discloses the use of Internet (8:31-38).

Regarding claims 9 and 10/9, the examiner takes Official notice that the use of online help was old and well known in the computer art (also, applicant points out that online help is "well known in the art" p.12, line 7). Online help is provided to a user to aid in understanding a particular aspect of information depicted on a computer interface device, for example. While help can be represented by a Help icon or button on a screen or device, it is also commonly in the form of an overlay when resting a cursor over a particular area of the computer interface and is intended to provide a value added service for a computer user. In D'Alessandro, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the business process to include the step of offering online help to explain the business solution in order to provide a full service alternative to an online user. Further regarding claim 10/9, D'Alessandro discloses the use of Internet (8:31-38).

9. Claims 2 and 10/2 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Alessandro (US-6556974) as applied to claim 1 above, further in view of Rose (US-5757917).

Rose teaches a business process that includes the steps of requesting payment and authenticating receipt of payment for commercial services obtained over the Internet.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the process of D'Alessandro to include the steps of requesting payment for service in order for the vendor to receive payment for the service provided to the user. One reason for requesting and authenticating payment is to ensure payment to the commercial business for services provided over the Internet.

Further regarding claim 10/2, D'Alessandro discloses the use of Internet (8:31-38).

10. Claims 5, 10/5, and 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Alessandro (US-6556974) as applied to claim 1 above, further in view of Bargnes (US-2003/0171981).

Regarding claim 5, Bargnes teaches the use of data analysis to determine optimization of a particular department within an organization (e.g., Figure 4, BASF Vision Plus department performance indicators 1-10 including gross profit percent, monthly productivity, etc.; priority areas 1-11; and projection performance factors 1-8 including 2 percent gross profit increase for materials and parts). One reason for using a departmental optimization analysis or technique is to determine the effectiveness of a change within an organization as it is related to increased productivity and profit of a department within an organization. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the D'Alessandro process to include a business tool for analyzing and optimizing performance of a particular department, e.g., the paint department, within an organization.

Further regarding claim 10/5, D'Alessandro discloses the use of Internet (8:31-38).

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Regarding claims 34-37, the particular computations or analyses related to evaluating optimization are within the level of ordinary skill in the operations research art, because a routinier in operations research, at the time the invention was made, would have been familiar with the technique of optimization used to increase profits or efficiency of an organization.

11. Claims 46/1, 47/46/1 and 48/46/1 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Alessandro (US-6556974) as applied to claim 1 above, further in view of White (book, How Computers Work).

Regarding claim 46/1, the process steps of requesting a survey of information, processing data to generate a profile, modifying the data to generate a survey, and furnishing the survey results based on the request is nothing more than a database manager query and response.

White teaches the use of database managers to carry out queries to sort and filter information, perform logic operations, and present the data in report format. Database managers are used to sort, filter, and report information contained within a database.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the process of D'Alessandro to include the steps of requesting information via a sort and filter query and providing a report of the results of the query to the requestor.

Regarding claims 47/46/1 and 48/46/1, the particular organization (insurance or marketing) is not given patentable weight in the process insofar as the type or classification of organization does not further modify the process steps that are performed by the method. Further, even if the process were further modified (such as the step of requesting a survey of the customer data) the particular type of organization is not a patentable distinction because any type of organization

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(insurance or marketing) is capable of performing the method without any change to the steps of the method.

12. Claims 46/5, 47/46/5 and 48/46/5 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Alessandro (US-6556974) and Bargnes (US-2003/0171981) as applied to claim 5 above, further in view of White (book, How Computers Work).

Regarding claim 46/5, the process steps of requesting a survey of information, processing data to generate a profile, modifying the data to generate a survey, and furnishing the survey results based on the request is nothing more than a database manager query and response.

White teaches the use of database managers to carry out queries to sort and filter information, perform logic operations, and present the data in report format. Database managers are used to sort, filter, and report information contained within a database.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the process of D'Alessandro and Bargnes to include the steps of requesting information via a sort and filter query and providing a report of the results of the query to the requestor.

Regarding claims 47/46/5 and 48/46/5, the particular organization (insurance or marketing) is not given patentable weight in the process insofar as the type or classification of organization does not further modify the process steps that are performed by the method. Further, even if the process were further modified (such as the step of requesting a survey of the customer data) the particular type of organization (insurance or marketing) is not a patentable distinction because

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any type of organization is capable of performing the method without any change to the steps of the method.

### *Conclusion*

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

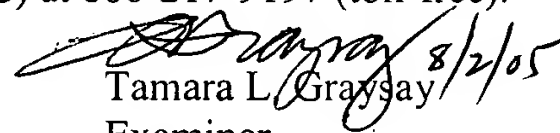
- Kaneko (EP-1107147-A2) teaches a planning apparatus and storage medium for business planning.
- Schmidt (EP-0770967-A2) teaches business analysis for decision making using hypothetical scenarios.
- Ushijima (JP-07319970-A) teaches automated business accounting system including profit and loss statements.
- Hayashi (JS-09305677-A) teaches automated profit management system and process.
- Uematsu (JP-11353368-A) teaches automated gross profit margin by department within an organization.
- Hodgetts (book, Management: theory, process, and practice) teaches effective control systems including expenses, budget, profit, loss, overall performance, etc.
- Shapiro (article, Manage customers for profits (not just sales)) teaches the repeated analysis of pinpointing costs and knowing dispersion of profitability.
- Tucker (book, Handbook of business formulas and controls) generally teaches the use of ratios for determining business improvement.
- Larson (book, Fundamental accounting principles) teaches definitions for various terms associated with operations research and business analysis.
- Spina (article, The systematic approach) teaches processes and systems to analyze and control workflow in a collision repair facility.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamara L. Graysay whose telephone number is (571) 272-6728. The examiner can normally be reached on Mon - Fri from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Tamara L. Graysay  
Examiner  
Art Unit 3623

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